

124 FERC ¶ 61,112  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER06-456-013  
ER06-954-009  
ER06-1271-008  
ER07-424-004  
EL07-57-002  
EL07-57-000

PJM Transmission Owners

Docket Nos. ER06-880-010  
ER06-880-003  
ER06-880-000  
(Consolidated)

ORDER CONDITIONALLY APPROVING CONTESTED SETTLEMENT

(July 29, 2008)

1. On September 14, 2007, PJM Interconnection, L.L.C. (PJM) filed a Settlement Agreement and Offer of Partial Settlement (Settlement) in these proceedings.<sup>1</sup> The Settlement resolves all issues set for hearing in the consolidated proceedings except for matters regarding assignment of cost responsibility to merchant transmission facilities.<sup>2</sup> On November 26, 2007, the presiding judge issued a Certification of Partial Settlement. This order conditionally approves the Settlement.

**I. Background**

2. On January 5, 2006, May 4, 2006, July 21, 2006, and January 11, 2007, PJM filed: (1) reports containing assignment of cost responsibility for certain transmission projects approved by the PJM Board of Managers (PJM Board) as part of PJM's Regional Transmission Expansion Plan (RTEP); and (2) revised tariff sheets incorporating into

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<sup>1</sup> PJM made this filing on behalf of the "Settling Parties," i.e., the signatories to the Settlement as set forth in Appendix A.

<sup>2</sup> The Settlement also resolves all issues set for hearing in Docket No. ER06-880-000, Docket No. ER07-632-000 and all related sub-dockets.

Schedule 12-Appendix of the PJM Open Access Transmission Tariff (Tariff) the assignments of cost responsibility for the approved projects.<sup>3</sup> The Commission accepted and suspended the filed tariff sheet revisions, made them effective subject to refund, established hearing and settlement judge procedures, and consolidated the proceedings (Docket Nos. ER06-456, *et al.*).<sup>4</sup>

3. On April 21, 2006, PJM Transmission Owners filed modifications to Schedule 12 of the Tariff to clarify provisions regarding (1) the allocation of transmission costs to merchant transmission owners, and (2) the calculation of transmission enhancement charges for point-to-point transmission customers. The Commission docketed this matter as ER06-880-000 and consolidated this matter with the proceedings in Docket No. ER06-456, *et al.*<sup>5</sup>

4. On March 16, 2007, as amended on April 4, 2007 and April 13, 2007, PJM filed revisions to the Tariff to reflect the participation of Neptune Regional Transmission System, L.L.C. (Neptune) in PJM, and include the terms and conditions of transmission service over the Neptune merchant transmission line in the Tariff (Schedule 14). The Commission docketed this matter as ER07-632-000. On May 3, 2007, the Commission approved a settlement (included with the April 4, 2007 amendment) in Docket No. ER07-632-000, which also resolved matters raised in Neptune's protest in Docket No. ER06-880-000.<sup>6</sup>

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<sup>3</sup> On July 23, 2007 and November 16, 2007, PJM filed: (1) reports containing assignment of cost responsibility for additional transmission projects approved by the PJM Board as part of PJM's RTEP, and (2) revised tariff sheets incorporating the assignment of cost responsibility for these additional projects into Schedule 12-Appendix of the PJM Tariff. The Commission accepted and suspended the filed tariff sheet revisions, and made them effective subject to refund and subject to the outcome of proceedings in Docket No. ER06-456, *et al.* See *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,034 (2007); *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,130 (2008).

<sup>4</sup> See *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,118 (2006); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,058 (2006), *order on reh'g*, 119 FERC ¶ 61,067 (2007) (April 19, 2007 Rehearing Order); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,033 (2007), *order on reh'g*, 120 FERC ¶ 61,193 (2007).

<sup>5</sup> *PJM Transmission Owners*, 115 FERC ¶ 61,345 (2006), *order on reh'g*, 120 FERC ¶ 61,013 (2007).

<sup>6</sup> See *PJM Interconnection, L.L.C.*, Docket No. ER07-632-000, *et al.* (May 3, 2007) unpublished letter order.

5. On April 19, 2007, the Commission expanded the scope of the proceedings in Docket No. ER06-456, *et al.* to include the appropriate methodology to be added to the Tariff to implement a beneficiary-pays approach for the allocation of costs for new transmission facilities that operate below 500 kV.<sup>7</sup> In addition, the Commission established an investigation under section 206 of the Federal Power Act<sup>8</sup> regarding PJM's cost allocation methodology for economic upgrades (Docket No. EL07-57-000). Docket No. EL07-57 was consolidated with the proceeding in Docket No. ER06-456, *et al.*

6. The Settling parties subsequently reached an agreement on various outstanding matters, and on November 26, 2007, the presiding judge issued a Certification of Contested Partial Settlement recommending that the Commission approve the Settlement.

## **II. Settlement Agreement**

7. The Settlement sets forth the methodology by which PJM will assign the costs of RTEP reliability upgrades that are planned to operate below 500 kV. Specifically, PJM will use a distribution factor (DFAX) analysis based methodology for determining the beneficiaries and therefore who should pay.<sup>9</sup>

8. Additionally, as directed in Docket No. EL07-57, the Settlement sets forth the methodology for assigning cost responsibility for three types of below 500 kV economic upgrades. Cost responsibility for economic-based enhancements or expansions that are modifications of reliability upgrades that are already included in the RTEP shall be assigned based on the DFAX analysis. For economic-based enhancements or expansions that are accelerations of reliability upgrades that are already included in the RTEP, PJM shall compare: (1) the DFAX analysis; and (2) a Locational Marginal Prices Benefits

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<sup>7</sup> April 19, 2007 Rehearing Order, 119 FERC ¶ 61,067 at P 16. In a companion order, the Commission accepted a methodology that allocates, on a region-wide basis, the costs of new, centrally-planned transmission facilities that operate at or above 500 kV. *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007); *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

<sup>8</sup> 16 U.S.C. § 824e (2006).

<sup>9</sup> PJM calculates distribution factors, represented as decimal values or percentages, which express the portions of a transfer of energy from a defined source to a defined sink that will flow across a particular transmission facility or group of transmission facilities. These distribution factors represent a measure of the effect of the load of each transmission zone or merchant transmission facility on the transmission constraint that requires the facility.

Methodology (LMP Benefits Methodology).<sup>10</sup> If the results from the two analyses indicate at least a ten percentage point cost responsibility assignment differential between the two analyses for any transmission zone, cost responsibility for the period of time the reliability based enhancement or expansion is accelerated shall be assigned using the LMP Benefits Methodology. Otherwise, cost responsibility will be assigned using the DFAX analysis. Additionally, cost responsibility shall be assigned based on the DFAX analysis for all periods other than the acceleration period. Finally, for economic upgrades implemented solely for the purpose of relieving one or more economic transmission constraints (economic-only upgrades), the Settlement states that, no later than one year after the Commission approves the Settlement, PJM will make a section 205 filing prescribing the methodology for assigning cost responsibility for such economic-only upgrades.<sup>11</sup>

9. PJM states that the Settlement applies to assignments of cost responsibility that are pending in Docket No. ER06-456, *et al.* With regard to RTEPs approved by the PJM Board after June 1, 2007, unless and until a different method for determination of cost responsibility assignments is allowed into effect by the Commission, the Settlement provides for the assignments of cost responsibility for all lower voltage facilities, including below 500 kV spare parts, replacement equipment, circuit breakers and associated equipment, and the economic-based enhancements or expansions that as planned will operate below 500 kV. PJM included revisions to Schedule 12 and Schedule 12-Appendix of its Tariff to implement the Settlement and the revised cost responsibility assignments.

10. PJM states that the Settlement resolves all issues set for hearing except for certain issues pertaining to assignments of cost responsibility to merchant transmission facilities. These remaining merchant transmission issues are reserved for hearing. The Settlement explains that PJM shall assign cost responsibility to merchant transmission facilities based on “Interim Values,” pending a Commission order resolving the cost-allocation issues that remain set for hearing. Any cost responsibility assignments based upon Interim Values will be subject to refunds and surcharges based upon the resolution of the issues set for hearing.

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<sup>10</sup> The LMP Benefit to a transmission zone shall equal the reduction in Locational Marginal Price payments made by load serving entities as a result of the acceleration project, assuming that customers purchase all energy needs from the PJM Interchange Energy Market. The LMP Benefits shall be converted into percentage cost responsibility assignments for the affected transmission zones.

<sup>11</sup> Costs of economic-only upgrades included in RTEPs prior to such a filing shall be allocated based on the methodology that the Commission ultimately approves.

11. Except as required to implement a Commission order resolving the hearing on merchant transmission issues, the Settlement establishes a three-year moratorium commencing on the effective date of the Settlement (i.e., the date the Commission approves or accepts the Settlement in its entirety, without condition or modification). The moratorium establishes the earliest date on which any proposed change to the Settlement methodology may become effective, not the earliest date on which a proposed change may be filed with the Commission.

12. Proposed changes to the Settlement cost assignment methodology that do not accord with the moratorium shall be required to meet, and shall be reviewed by the Commission, under the following standards of review: (1) if a change is requested by a Settling Party or a non-settling entity other than the Commission, the standard of review shall be the “public interest” standard; and (2) if the Commission *sua sponte* initiates a proceeding pursuant to section 206 of the Federal Power Act to consider a potential change, the standard of review shall be the “just and reasonable” standard; provided, however, that for purposes of determining the relevant standard of review, a proceeding shall not be deemed to have been initiated *sua sponte* by the Commission if any entity, including but not limited to the Settling Parties, has requested directly or indirectly that the Commission initiate such a proceeding. The standard of review of any proposed modification to the Settlement after the moratorium shall be the just and reasonable standard.

13. Upon approval of the Settlement, the Settling Parties shall be deemed to have withdrawn all pending requests for rehearing in Docket No. ER06-456, *et al.*, except with regard to the merchant transmission issues set for hearing and the challenges to Opinion No. 494. In the event that a final Commission order, following judicial review, changes the assignment of cost responsibility established in Opinion No. 494, then the Settlement shall apply to all centrally-planned facilities that are not assigned on a region-wide basis. However, the Settlement shall not apply to the assignment of cost responsibility for centrally-planned facilities that are planned to operate at or above 500 kV.

### **III. Comments on Settlement**

14. Initial comments were filed by American Municipal Power – Ohio, Inc. (AMP-Ohio) and the New Jersey Board of Public Utilities (NJBPU). Reply comments were filed by Commission Trial Staff, Indicated Transmission Owners,<sup>12</sup> and PJM.

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<sup>12</sup> The Indicated Transmission Owners include: Public Service Electric & Gas Company, PSEG Energy Resources and Trade LLC, PPL Electric Utilities Corporation, and Pepco Holdings, Inc. and its affiliates Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company.

**A. Initial Comments**

15. AMP-Ohio filed comments opposing the Settlement's application of the public interest standard of review to non-settling parties and to the Commission when acting on non-parties' behalf. AMP-Ohio contends that the parties to a contract may agree among themselves not to exercise their FPA unilateral modification rights; however, these parties may not impose a more demanding standard than the FPA's just and reasonable standard on non-signatory parties. AMP-Ohio argues that because the Settlement addresses the pricing of transmission service under a wide-area tariff, and thus would affect rates and charges to virtually every transmission customer across the vast expanse of PJM, the Settling Parties cannot impose the public interest standard to a settlement of such broad applicability. Further, AMP-Ohio states that the Settling Parties have provided no justification for the use of the public interest standard.

16. NJBPU also submitted comments on the Settlement, stating that while it does not oppose the Settlement, it believes the Settlement ignores the benefits that certain generators receive when a transmission upgrade is made. NJBPU requests that the Commission direct PJM to identify the benefits to specific generators by running market efficiency analyses or other similar analyses during the three-year moratorium period. Additionally, NJBPU requests that the Commission encourage PJM to work with other stakeholders to determine an appropriate methodology for allocating a share of the transmission costs to benefiting generators and to file that allocation methodology with the Commission at the end of the moratorium.

**B. Reply Comments**

17. Commission Trial Staff and the Indicated Transmission Owners responded to AMP-Ohio's comments, stating that AMP-Ohio's objections should be denied and the Settlement approved without modification or condition. Trial Staff and the Indicated Transmission Owners state that applying the public interest standard during the moratorium period will benefit customers by providing certainty for cost allocation methodology for new transmission projects that are approved through the RTEP process over the next three years. Further, Trial Staff and the Indicated Transmission Owners note that the Commission may still *sua sponte* initiate a proceeding to investigate the Settlement using a just and reasonable standard.

18. PJM filed a response to NJBPU, stating that it has already committed to provide information similar to that which the NJBPU seeks. Specifically, under Schedule 6 of the PJM Operating Agreement, PJM must calculate and post on its internet site the change in total generator revenue from energy production on a zonal and system-wide basis for both economic-based projects and accelerations of existing reliability-based projects for economics. Additionally, in the context of PJM's Order No. 890 compliance filing, stakeholders are considering the type of information that should be provided to the Transmission Expansion Advisory Committee to promote transparency in the

transmission planning and cost allocation process. PJM states that if stakeholders determine that the methodology for assigning costs should be modified at the end of the moratorium period, PJM will work with its members to take appropriate action. However, PJM does not believe the Commission should order such a filing.

#### **IV. Commission Determination**

19. The Settlement is fair and reasonable and in the public interest and is hereby conditionally approved, subject to the condition stated below. We commend PJM and the Settling Parties for working together on a Settlement that establishes a cost-allocation mechanism for new transmission facilities that operate below 500 kV. The Commission's conditional approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or interest in this proceeding.

20. The Settlement provides:

Proposed changes to the Settled Assignment Methodology that do not accord with the Moratorium shall be required to meet, and shall be reviewed by the Commission, under the following standards of review: (i) if a change is requested by a Settling Party or a non-settling entity other than the Commission, the standard of review shall be the "public interest" standard; and (ii) if the Commission *sua sponte* initiates a proceeding pursuant to section 206 of the Federal Power Act to consider a potential change, the standard of review shall be the "just and reasonable" standard; provided, however, that for purposes of determining the relevant standard of review, a proceeding shall not be deemed to have been initiated *sua sponte* by the Commission if any entity, including but not limited to the Settling Parties, has requested directly or indirectly that the Commission initiate such a proceeding. The standard of review of any proposed modification to the Settlement after the moratorium shall be the just and reasonable standard.

Settlement, Section X, P 38 (iii) (footnote omitted).

21. In light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the settlement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the "most stringent standard permissible under applicable law."

22. In response to the comments of NJBPU, we note that PJM already provides information regarding changes in production costs and generator revenues on a zonal basis for economic-based projects and accelerations of existing reliability-based projects for economics. Additionally, PJM has committed to provide information to, and work

with, its stakeholders in the transmission planning process.<sup>13</sup> We encourage PJM to continue to work with its stakeholders to determine if any changes should be made to PJM's cost allocation methodology.

The Commission orders:

The Settlement filed on September 14, 2007 is hereby conditionally approved, as discussed in the body of this order.

By the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a separate joint statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>13</sup> On May 15, 2008, the Commission accepted revisions to PJM's transmission planning process to address certain planning principles, as required by Order No. 890. *See PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (2008).



Appendix

**Settling Parties**

PJM Interconnection, L.L.C.  
American Electric Power Service Corp.  
Allegheny Power  
Baltimore Gas and Electric Company  
City of Hagerstown, Maryland  
Dayton Power and Light Company  
Dominion Resources Services, Inc.  
East Coast Power, L.L.C.  
Exelon Corporation  
FirstEnergy Companies  
Hudson Transmission Partners, L.L.C.  
Indiana and Michigan Municipal Distributors Association  
Illinois Municipal Electric Agency  
Long Island Power Authority  
Neptune Regional Transmission System, L.L.C.  
New York Power Authority  
Old Dominion Electric Cooperative  
Pepco Holdings, Inc. and its affiliates: Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company  
PPL Electric Utilities Corporation  
Public Service Electric and Gas Company, PSEG Energy Resources & Trade, L.L.C.  
Rockland Electric Company  
Town of Thurmont, Maryland  
Town of Williamsport, Maryland

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(Consolidated)

(Issued July 29, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The parties agree to a three-year moratorium, establishing the earliest date on which any proposed change to the settlement methodology may become effective. The parties state that changes to the settled assignment methodology during the moratorium shall be considered under the following standards of review: (i) if a change is requested by a party or a non-settling third party other than the Commission, the standard of review shall be the “public interest” standard; and (ii) if the Commission acting *sua sponte* initiates a proceeding under Federal Power Act section 206 to consider a potential change, the standard of review shall be the “just and reasonable” standard. The standard of review of any proposed modification to the Settlement after the moratorium shall be based on the just and reasonable standard.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,<sup>1</sup> the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

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<sup>1</sup> 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

We continue to disagree with the majority's characterization of the D.C. Circuit's holding in *Maine PUC* as to the applicability of the "public interest" standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*<sup>2</sup> and *Westar Energy, Inc.*,<sup>3</sup> we respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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Suede G. Kelly  
Commissioner

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<sup>2</sup> 123 FERC ¶ 61,201 (2008).

<sup>3</sup> 123 FERC ¶ 61,252 (2008).